

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 502 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

KAMAL TRADERS, PRO. RIYAZBHAI GULAMKADAR VORA

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR MA PATEL, Ld. APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/09/98

ORAL JUDGEMENT

Heard learned advocate Mr. R.S. Sanjanwala for
the petitioner.

Rule.

Learned APP Mr. M.A. Patel, waives service of
the rule on behalf of respondents no.1 & 2.

2. The petitioner has challenged legality, validity and the proprietary of the order passed by learned JMFC Umreth, dtd.29.8.98, below application Mark Z/3, made in the proceedings of Prohibition Case No. C.R. 59/98, and has also challenged the order passed by learned Additional Sessions Judge, Camp at Anand, District Kheda, dtd.6.7.98, passed in the proceedings of Criminal Revision Application No.31 of 1998.

3. The petitioner has been dealing in jaggery (Gur) from his Shop No.9 at Agriculture Produce Market Committee Yard, Umreth (Sardar Complex), District Kheda. That on 11.4.98 the petitioner had stored 257 bags of Gur in different godowns. The petitioner had brought the said Gur into the limits of Umreth Nagar Palika after paying octroi thereon. That the value of the said Gur is Rs.1,02,800/-. That the said quantity of Gur has been seized by respondent no.2 in connection with Prohibition Case No.59 of 1998 filed against the petitioner, inter-alia, alleging the offence punishable under Section 70 A of the Bombay Prohibition Act, 1949, (hereinafter referred to as the Act). That the respondent no.2 has alleged that petitioner possessed the subject Gur which is "rotten gur" within the meaning of section 2 (39 A of the Act), without holding any requisite pass or permit issued by the authority under the Act. That in all 214 bags containing said Gur lying in shop No.9 of Umreth Sardar Complex Market Yard has been sealed by the respondent no.2 and remaining 43 bags of said Gur are lying in the custody of respondent No.2 at Prohibition Office.

4. That the petitioner moved application No.8 of 1998 in the court of Learned in charge Chief Judicial Magistrate First Class, Anand under section 451 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code), inter-alia, praying for release of subject muddamal on the terms and conditions that may be imposed by the court. That vide order dtd.18.5.98, the court allowed the application subject to conditions imposed therein. However, Revision Application No.39/98 was filed by present respondents against the said order in the court of learned Additional Sessions Judge, Kheda. That vide order dtd.6.7.98, learned Additional Sessions Judge, Kheda allowed the said revision application and set aside the order passed by trial court releasing the muddamal articles.

5. That being aggrieved and dissatisfied by the said order dtd.6.7.98 of learned Addl.Sessions Judge, Kheda,

passed in Revision Application No.39/98, the petitioner had preferred Criminal Revision Application No.428 of 1998 in this court. That vide order dtd.24.7.98, this court (Coram: R.M. Doshit, J) recording the contentions raised by the petitioner, permitted the petitioner to withdraw the said revision application so as to enable the petitioner to make fresh application before the trial court seeking permission to transport the muddamal gur out of the State of Gujarat. That thereafter petitioner moved application in the court of JMFC Umreth, vide Mark Z/3, Muddamal Application No.8/98 in the Prohibition Case bearing Crime Register No.59/98, inter-alia praying permission to take the muddamal gur out of the State of Gujarat on the terms and conditions imposed by the court. That vide order dtd.29.7.98, learned JMFC Umreth rejected the said application.

6. That being aggrieved and dissatisfied by the above stated orders, petitioner has preferred the present proceedings as stated hereinabove.

7. Mr. R.S. Sanjanwala, learned advocate appearing for the petitioner has referred to and relied on a true copy of order dtd.28.1.1986 passed by this court (Coram: G.T. Nanavati, J) in the proceedings of Special Criminal Application Nos. 4 & 5 of 1986, and has urged that muddamal article gur being perishable goods it is obligatory on the trial court to pass appropriate order for disposal of the same under section 451 of the Code. That petitioner being the owner is prima facie entitled to claim the custody of the said gur subject to the provisions of law. That petitioner had prayed permission to transport the said gur out of the territory of Gujarat where possession of the said gur is not unlawful. That learned JMFC having failed to consider the said aspect and passed the impugned order contrary to the facts of the case which is likely to cause heavy loss to the petitioner. That petitioner is still ready and willing to remove the said muddamal goods out of the territory of Gujarat or take the custody of the said goods from respondent no.2 at his cost and risk outside the territory of Gujarat to prevent heavy financial loss. As against that, learned APP Mr. M.A. Patel has vehemently opposed the application contending that as per the circular issued by the State of Gujarat, such rotten gur like muddamal articles be sold to specified agents who are issued licence under the Act, and thereby no loss is likely to be sustained to the petitioner. That petitioner cannot be permitted to hold the goods in contravention of the provisions of the act so as to remove the same from out of the territory of the Gujarat.

8. It is undisputed that petitioner is the owner of the subject goods. It is also undisputed that nature of the said muddamal gur is such that by passage of time it would continue to deteriorate and become rotten as well as useless. That pending the trial, if the goods is not sold or disposed of, it would be useless either for the petitioner or for the State, and therefore, appropriate orders should have been passed so as to minimise the loss to the petitioner subject to the provisions of the Act.

9. That in the order dtd.29.1.1986 passed by this court in the proceedings of Special Criminal Application Nos. 4 & 5 of 1986, this court having followed the view expressed in Criminal Misc. Application Nos.774 & 775 of 1985 has expressed the view that under such circumstances party can be permitted to transport the subject goods outside the territory of Gujarat subject to the conditions that party shall execute a bond and give security to the satisfaction of the court that party shall produce the value of the goods as and when called upon and shall not raise contention during the trial that muddamal is not before the court.

10. In the instant case, petitioner has filed statement dtd.21.9.98, stating the fact that petitioner is ready and willing to take the custody of the subject gur outside the territory of Gujarat either of the following addresses and on appropriate conditions that may be imposed by the court.

1. Maheshchandra Ropchand,
Post - Gagar Talai
Rajasthan.

2. C.U. Traders,
Post - Gol Vad,
Taluka - Dhanu,
Dist: Thana,
Maharashtra.

11. In over all consideration of facts and circumstances apparent from the material produced on record, and in consideration of the views expressed by this court in the proceedings of Spl.Criminal Appln. Nos. 4 & 5 of 1986, vide order dtd.28th January, 1986, in my opinion, it would be just and proper to allow the petitioner to take the custody on appropriate terms and conditions so as to prevent financial loss to the petitioner and protect the interest of the respondent-State. Hence, following order:

(I) The impugned orders of learned Additional Sessions Judge, Kheda dtd.6.7.98 passed in the proceedings of Criminal Revision Application No.31/98 and the order of learned JMFC Umreth, dtd.29.8.98 passed below Mark.Z/3, in the proceedings of Prohibition C.R.No.59/98 are hereby set aside and quashed.

(II) That the court of JMFC Umreth is directed to deliver the custody of the muddamal gur to the petitioner on following terms and conditions:

(a) The petitioner shall file undertaking before the trial court that he shall take the custody of the muddamal gur at either of the place stated hereinunder at his cost and risk and shall not store or permit the use of the same within the territory of the State of Gujarat and shall immediately arrange to transmit the same at the either of the address stated hereinunder:

1. Maheshchandra Ropchand,
Post - Gagar Talai
Rajasthan.

2. C.U. Traders,
Post - Golvad,
Taluka - Dhanu,
Dist: Thana,
Maharashtra.

(b) The petitioner shall execute a bond for Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only), and shall furnish a security to the satisfaction of the trial court for the like amount to fulfil a condition that value of the said muddamal article shall be produce before the court as and when required and called upon to produce.

(c) The petitioner shall not take objection during the trial arising from Prohibition C.R. No.59/98 that muddamal article is not present before the court.

(d) The petitioner shall not use or permit to use the goods of muddamal article for human consumption within the territory of Gujarat or outside the territory of Gujarat and shall use the same for lawful purpose.

(e) The custody of the muddamal article shall be

given to the petitioner on above stated conditions after taking necessary sample in appropriate condition.

(III) That the trial court shall hand over the custody of the muddamal articles to respondent no.2 on the above stated conditions within a period of two weeks from the receipt of the writ of this order.

Rule is made absolute accordingly. No order as to costs.

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